

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

CITY OF ST. LOUIS)	
)	
Plaintiff,)	
)	Case No. 4:23-cv-00987-SRC
v.)	
)	
CHS TX, INC., D/B/A/ YESCARE,)	
LEXINGTON INSURANCE CO., and)	
GREAT MIDWEST INSURANCE CO.,)	
)	
Defendants.)	

**PLAINTIFF CITY OF ST. LOUIS’S CONSENT MOTION FOR LEAVE AND
EXTENSION OF TIME TO SERVE DEFENDANT LEXINGTON INSURANCE CO.**

COMES NOW Plaintiff City of St. Louis (the “City”), by and through counsel, and respectfully requests leave to serve Lexington Insurance Company (“Lexington”) out of time, and in support, states as follows:

1. In this lawsuit, as more fully alleged in the petition, the City is seeking a declaratory judgment that Defendants are liable to the City for expenses incurred in connection with the City’s defense and settlement in *Perry v. City of St. Louis, et al.*, No. 4:17-cv-0981.
2. City filed the instant suit in the Twenty-Second Judicial Circuit of the State of Missouri on June 30, 2023.
3. Defendants CHS TX, Inc. (“CHS TX”) and Great Midwest Insurance Company were timely served in July 2023.
4. Because Lexington’s registered agent is located in Delaware, it was necessary for the City to hire the New Castle County Sheriff to serve process, which required the City Counselor’s Office to request a check from the Comptroller’s Office.

5. After obtaining the W-9 for the New Castle County Sheriff, undersigned counsel initiated, by memorandum on July 13, 2023, the process of requesting the check. The request was then submitted to the Comptroller's Office by the City Counselor's Office on July 21, 2023; and the check did not issue until on or around August 23, 2023.
6. CHS TX filed its notice of removal on August 8, 2023, before the City received the check from the Comptroller's Office.
7. On August 14, 2023, CHS TX filed a motion to transfer the case to the United States Bankruptcy Court for the Southern District of Texas.
8. The City filed a motion to remand the case to state court on September 1, 2023 and a response in opposition to the motion to transfer on September 13, 2023.
9. This Court denied the motion to remand on October 2, 2023 and has not yet ruled on the motion to transfer.
10. Due to the City's prioritization of preparing the motion to remand, the response in opposition to the motion to transfer, and the reply in support of its motion to remand, as well as counsel's attendance at trial in the Twenty-Second Judicial Circuit in cause no. 1922-CC10565, between October 16-18, 2023, the City inadvertently overlooked that it had not requested that Lexington waive service until after Fed. R. Civ. P. Rule 4(m)'s 90-day time limit for service had elapsed.
11. On or about November 14, 2023, the City sent Lexington a packet requesting waiver of service via certified mail, but the packet was mistakenly sent to an incorrect address and returned to sender as "unclaimed" and "unable to forward."
12. The City did not receive the returned packet until last week.

13. In light of the foregoing, the City respectfully requests leave to send its request for waiver of service to Lexington out of time.

14. This request for an extension of time is not made in bad faith, and the granting of this motion will not substantially delay the progression of this case or prejudice Defendants. To date, no case management order has been ordered in this cause.

15. Plaintiff has conferred with counsel for Defendants CHS TX and Great Midwest, and Defendants CHS TX and Great Midwest consent to the City's motion for leave to serve its request for waiver of service to Lexington out of time.

WHEREFORE the City respectfully requests that this Court grant it leave to send its request for waiver of service to Lexington on or before February 15, 2024, and for such further relief this Court deems necessary.

Dated: January 30, 2024

Respectfully submitted,

**SHEENA HAMILTON
CITY COUNSELOR**

By: /s/ Erin K. McGowan

Erin McGowan

#64020MO

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2024, **Plaintiff's Motion for Leave and Extension of Time to Serve Defendant Lexington**, were electronically filed with the Clerk of Court using the Court's ECF filing system, to be served on all counsel of record.

/s/ Erin K. McGowan
